

No. 03-20-00497-CV

**In the Court of Appeals
for the Third Judicial District
Austin, Texas**

FILED IN
3rd COURT OF APPEALS
AUSTIN, TEXAS
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JEFFREY D. KYLE
Clerk

RUTH HUGHS, IN HER OFFICIAL CAPACITY AS
TEXAS SECRETARY OF STATE,

Appellant,

v.

MOVE TEXAS ACTION FUND,

Appellee.

On Appeal from the
419th Judicial District Court, Travis County

**APPELLANT'S UNOPPOSED MOTION TO DISMISS CASE
FOR LACK OF JURISDICTION**

TO THE HONORABLE THIRD COURT OF APPEALS:

On November 17, 2020, Plaintiff-Appellee MOVE Texas Action fund nonsuited all of its claims against Defendant-Appellant Ruth R. Hughs, in her official capacity as Texas Secretary of State. A copy of Appellee's notice of nonsuit is attached as Exhibit A. This notice of nonsuit was effective upon its filing, and as a result, the Court no longer has jurisdiction over this appeal and should dismiss it on that basis.

Under Texas Rule of Civil Procedure 162, “[a]t any time before the plaintiff has introduced all of his evidence other than rebuttal evidence, the plaintiff may dismiss a case, or take a non-suit, which shall be entered in the minutes.” “Under Texas law, parties have an absolute right to nonsuit their own claims for relief at any time during the litigation until they have introduced all evidence other than rebuttal evidence at trial.” *Villafani v. Trejo*, 251 S.W.3d 466, 468–69 (Tex. 2008).

Rule 162 applies in this case because Appellee has filed its nonsuit while this matter is pending on interlocutory appeal from the trial court’s denial of the Secretary’s plea to the jurisdiction. *See Univ. of Tex. Med. Branch at Galveston v. Estate of Blackmon ex rel. Shultz*, 195 S.W.3d 98, 100–01 (Tex. 2006) (per curiam). As in this case, the appellee in *Shultz* filed a notice of nonsuit while the appellant’s interlocutory appeal from the denial of its plea to the jurisdiction was pending in the court of appeals. *Id.* at 100. Thereafter, the appellee filed a motion to dismiss the appellant’s interlocutory appeal for want of jurisdiction, which the court of appeals denied. *Id.* The Supreme Court “conclude[d] that the nonsuit deprived the court of appeals of jurisdiction” *Id.*

Supreme Court precedent therefore compels dismissal here. “A nonsuit ‘extinguishes a case or controversy from the moment the motion is filed or an oral motion is made in open court; the only requirement is the mere filing of the motion

with the clerk of the court.’” *Travelers Ins. Co. v. Joachim*, 315 S.W.3d 860, 862 (Tex. 2010) (cleaned up) (quoting *Shultz*, 195 S.W.3d at 100). When, as here, “a claim is timely nonsuited, the controversy as to that claim is extinguished, the merits become moot, and jurisdiction as to the claim is lost.” *City of Dallas v. Albert*, 354 S.W.3d 368, 375 (Tex. 2011). “One unique effect of a nonsuit is that it can vitiate certain interlocutory orders, rendering them moot and unappealable.” *Villafani*, 251 S.W.3d at 469. The trial court’s order denying the Secretary’s plea to the jurisdiction is therefore vitiated, and this case is moot. *See Shultz*, 195 S.W.3d at 101 (noting that “the nonsuit vitiated only the trial court’s interlocutory order denying [the defendant’s] plea to the jurisdiction”).

The automatic stay of trial-court proceedings triggered by the Secretary’s appeal of the trial court’s order, *see* Tex. Civ. Prac. & Rem. Code § 51.014(b), does not prevent the case from becoming moot. Although the Supreme Court has declined to decide “whether a non-suit could be filed in the trial court during a section 51.014 stay, . . . neither a statutory stay of trial court proceedings nor any other statute could vest this Court or any other with authority to decide moot cases in violation of the constitutional limitations on [its] jurisdiction.” *Morath v. Lewis*, 601 S.W.3d 785, 788 (Tex. 2020) (per curiam).

Accordingly, the Court should grant the Secretary’s motion, vacate the trial court’s order denying the plea to the jurisdiction, and dismiss the case for want of jurisdiction. *See Shultz*, 195 S.W.3d at 100–01; *see also Heckman v. Williamson County*, 369 S.W.3d 137, 162 (Tex. 2012) (“If a case is or becomes moot, the court must vacate any order or judgment previously issued and dismiss the case for want of jurisdiction.”).

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CERTIFICATE OF CONFERENCE

On November 18, 2020, I conferred with Jane Webre, counsel for Appellee, who stated that this motion is unopposed.

/s/Anne Marie Mackin

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CERTIFICATE OF SERVICE

I certify that on November 20, 2020, this document was served electronically on counsel for Appellee via email to:

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Microsoft Word reports that this brief contains 633 words, excluding the portions of the brief exempted by Rule 9.4(i)(1).

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